

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ISAIAS GUTIERREZ NUNEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Hon. Dennis M. Cavanaugh

ORDER

Crim. No. 03-490 (DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon motion by Isaias Gutierrez Nunez (“Petitioner”) for a sentencing adjustment filed on December 27, 2009, purportedly pursuant to 18 U.S.C. § 3642 (c) and § 3553(a); this Court, having carefully considered the parties’ submissions;

WHEREAS the Petitioner was sentenced on March 21, 2005;

WHEREAS the Court finds that Petitioner’s motion for sentencing adjustment is governed by Fed. R. Crim. P. 35(a);

WHEREAS the Court finds Petitioner’s motion for sentencing adjustment to be untimely, pursuant to Fed. R. Crim. P. 35(a)¹;

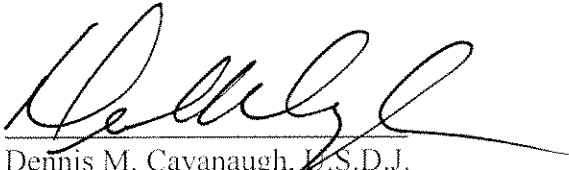
WHEREAS Petitioner’s only remaining alternative to seek adjustment of an allegedly illegal sentence is pursuant to 28 U.S.C. § 2255;

¹ Pursuant to Fed. R. Crim. P. 35(a), the Court may correct a sentence that resulted from error within 14 days after sentencing.

WHEREAS even if the Court construes Petitioner's motion as one under 28 U.S.C. § 2255, this remedy has been exhausted, as Petitioner filed a petition under § 2255 on December 29, 2005, and the Court ultimately denied it on July 7, 2007;²

IT IS on this 26 day of May, 2010;

ORDERED that Petitioner's motion for a sentencing adjustment is **denied**.


Dennis M. Cavanaugh, U.S.D.J.

Original: Clerk
cc: All Counsel of Record
Hon. Mark Falk, U.S.M.J.
File

² Moreover, the Court notes that the statute of limitations has expired for any further motions under 28 U.S.C. § 2255.